

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION**

KC FILED
DEC 04 2007
12-4-2007
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

REZA KHEIRKHAHVASH,)

Plaintiff.)

v.)

RUTH A. DOROCHOFF, in her official)
capacity as District Director of United)
States Citizenship and Immigration)
Services,)

Defendant.)

Case No:

07CV6801

JUDGE GETTLEMAN

MAGISTRATE JUDGE VALDEZ

COMPLAINT FOR WRIT OF MANDAMUS

Plaintiff REZA KHEIRKHAHVASH ("Plaintiff"), by and through his attorneys, the Law Offices of Kameli & Associates, P.C., respectfully requests an order directing Defendant RUTH A. DOROCHOFF ("Defendant") to adjudicate Plaintiff's Form N-400 Application for Naturalization ("N-400"), and in support of said request, Plaintiff states as follows:

JURISDICTION AND VENUE

1. This is a civil action brought pursuant to 8 U.S.C. § 1447(b), 8 C.F.R. § 335.3(a), and 8 C.F.R. § 310.5. Jurisdiction is conferred upon this Court by 8 U.S.C. § 1447(b) and 28 U.S.C. § 1331, as this is a civil action arising under a law of the United States. In addition, jurisdiction is also conferred pursuant to 28 U.S.C. § 1361, as the district courts shall have original jurisdiction over a mandamus action to compel an officer of the United States to perform a duty owed to Plaintiff. This duty is clearly defined in 8 U.S.C. § 1447(b), 8 C.F.R. § 335.3(a), and 8 U.S.C. § 1421(a). Finally, jurisdiction is conferred upon this Court pursuant the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

2. Venue is proper under 28 U.S.C. §§ 1391(b) and (e), since Defendant is acting in her official capacity as the local District Director of United States of Citizenship and Immigration Services (“USCIS”), a division of the Department of Homeland Security (“DHS”), an agency of the United States Government, located in Chicago, Illinois. Plaintiff filed his N-400 Application for Naturalization with the Chicago, Illinois USCIS office.

PARTIES

3. Plaintiff is a legal permanent resident of the United States, born December 23, 1936 in Iran. Plaintiff currently resides in Chicago, Cook County, Illinois. Plaintiff’s alien number is A 47-455-315.

4. Defendant is the Chicago, Illinois District Director of USCIS, a section of the DHS. As such, Defendant is charged with the administration and enforcement of all the functions, powers, and duties of the Chicago Office of USCIS.

CLAIMS FOR RELIEF

5. Plaintiff filed his N-400 on October 3, 2005. Exhibit A.

6. Plaintiff attended an interview in furtherance of his N-400 on February 23, 2006 with Officer DeSomer of USCIS. Exhibit B. Although Plaintiff passed the English and U.S. history and government tests, Officer DeSomer informed Plaintiff that a decision on his N-400 could not be made at that time.

7. A case status search conducted through USCIS’ website on December 3, 2007 in reference to Plaintiff’s N-400 indicated that this N-400 application number is not recognized by USCIS’ system. Exhibit C.

8. Upon Plaintiff’s information and belief, Plaintiff’s N-400 has not been adjudicated. To date, approximately two years and two months have passed since Plaintiff filed

his N-400 and more than one year and 11 months have passed since Plaintiff's N-400 interview, at which time he successfully completed the relevant citizenship examinations. Exhibits A, B, and C.

9. 8 U.S.C. § 1447(b) provides:

[i]f there is a failure to make a determination under section 335 [8 USCS § 1446] before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.

8 U.S.C. § 1447(b). Defendant has far exceeded the statutory 120-day period in which a decision on a naturalization application must be rendered.

10. In addition, 8 C.F.R. § 335.3(a) provides:

[t]he Service officer shall grant the application if the applicant has complied with all requirements for naturalization under this chapter. A decision to grant or deny the application shall be made at the time of the initial examination or within 120-days after the date of the initial examination of the applicant for naturalization under § 335.2. The applicant shall be notified that the application has been granted or denied and, if the application has been granted, of the procedures to be followed for the administration of the oath of allegiance pursuant to part 337 of this chapter.

8 C.F.R. § 335.3(a). Here again, Defendant has far exceeded the 120-day period in which a decision on a naturalization application must be rendered. Moreover, Plaintiff "has complied with all requirements for naturalization" as required under 8 C.F.R. § 335.3(a) and the INA.

11. The regulatory counterpart to 8 U.S.C. § 1447(b) is 8 C.F.R. § 310.5, which provides:

An applicant for naturalization may seek judicial review of a pending application for naturalization in those instances where the Service fails to make a determination under section 335 of the Act within 120 days after an examination

is conducted under part 335 of this chapter. An applicant shall make a proper application for relief to the United States District Court having jurisdiction over the district in which the applicant resides. The court may either determine the issues brought before it on their merits, or remand the matter to the Service with appropriate instructions.

8 C.F.R. § 310.5(a). Again, Defendant has exceeded the statutory time limit provided for adjudication of his naturalization application and thus judicial review is available.

12. The Form N-652 Naturalization Interview Results issued to Plaintiff by USCIS on February 23, 2006, and attached as Exhibit B, notes that Plaintiff “has a right to request a hearing . . . before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.”

13. Defendant, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 702, 704, and 706, is unlawfully withholding or unreasonably delaying a decision on Plaintiff’s N-400, and has not completed the adjudicative functions delegated to her by the laws of the United States.

14. Due to Defendant’s failure to adjudicate Plaintiff’s N-400, Defendant stands in violation of 8 U.S.C. § 1447, 8 C.F.R. § 310.5, and 8 C.F.R. § 335.3.

15. Plaintiff has exhausted any administrative remedies that may exist by his continued diligence in prosecuting his N-400.

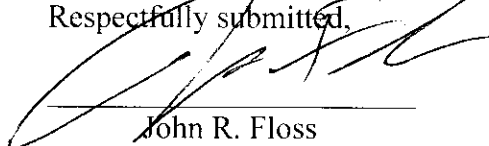
WHEREFORE, Plaintiff Reza Kheirkhahvash respectfully requests this Honorable Court grant the following relief:

- A. Hold a hearing on this matter pursuant to 8 U.S.C. § 1447(b), or
- B. Compel Defendant and those acting under her to perform their duty to rule upon Plaintiff’s Form N-400 Application for Naturalization;
- C. Grant Plaintiff attorney’s fees and costs of court incurred herein; and,

D. Grant any and all relief this Court deems fair and just.

KAMELI & ASSOCIATES, P.C.

Respectfully submitted,





John R. Floss

Law Offices of Kameli & Associates, P.C.
111 E. Wacker Drive, Suite 555
Chicago, Illinois 60601
(312) 233 – 1000 – phone
(312) 233 – 1007 – facsimile

Dated: December 3, 2007

THE UNITED STATES OF AMERICA

Receipt			NOTICE DATE October 11, 2005
CASE TYPE N400 Application For Naturalization			INS A# A 047 455 315
APPLICATION NUMBER LIN*000828336	RECEIVED DATE October 03, 2005	PRIORITY DATE October 03, 2005	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS REZA KHEIRKHAHVASH # 110 1813 HEMLOCK PLACE SCHAUMBURG IL 60173		PAYMENT INFORMATION: Single Application Fee: \$390.00 Total Amount Received: \$390.00 Total Balance Due: \$0.00	
<p>The above application has been received by our office and is in process. Our records indicate your personal information is as follows:</p> <p>Date of Birth: December 23, 1936 Address Where You Live: 1813 HEMLOCK PLACE # 110 SCHAUMBURG IL 60173</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 540 days of this notice.</p>			
<p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p>			
INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE PO BOX 87400 LINCOLN NE 68501-		INS Customer Service Number: (800) 375-5283	
LIN\$000777832		APPLICANT COPY	
			
			

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 47 455 315

On 2-23-06, you were interviewed by USCIS officer: DESOMER


- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/ _____ read/ _____ write _____ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.
- A) _____ **Congratulations! Your application has been recommended for approval.** At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.
- B) X **A decision cannot yet be made about your application.**
- It is very important that you:
- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.





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